

§ 429.128

(c)(1) The General Counsel (or delegee) shall adopt, modify, or set aside the conclusions of law or discretion contained in the ALJ's recommended decision and shall set forth a final order assessing a civil penalty. The General Counsel (or delegee) shall include in the final order the ALJ's findings of fact and the reasons for the final agency actions.

(2) Any person against whom a penalty is assessed under this section may, within 60 calendar days after the date of the final order assessing such penalty, institute an action in the United States Court of Appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of title 5, United States Code. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in part, the final order, or the court may remand the proceeding to the Department for such further action as the court may direct.

§ 429.128 Immediate issuance of order assessing civil penalty.

(a) If the respondent elects to forgo an agency hearing pursuant to § 429.124, the General Counsel (or delegee) shall issue an order assessing the civil penalty proposed in the notice of proposed penalty under § 429.122, 30 calendar days after the respondent's receipt of the notice of proposed penalty.

(b) If within 60 calendar days of receiving the assessment order in paragraph (a) of this section the respondent does not pay the civil penalty amount, DOE shall institute an action in the appropriate United States District Court for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part, such assessment.

§ 429.130 Collection of civil penalties.

If any person fails to pay an assessment of a civil penalty after it has be-

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come a final and unappealable order under § 429.126 or after the appropriate District Court has entered final judgment in favor of the Department under § 429.128, the General Counsel (or delegee) shall institute an action to recover the amount of such penalty in any appropriate District Court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

§ 429.132 Compromise and settlement.

(a) DOE may compromise, modify, or remit, with or without conditions, any civil penalty (with leave of court if necessary).

(b) In exercising its authority under paragraph (a) of this section, DOE may consider the nature and seriousness of the violation, the efforts of the respondent to remedy the violation in a timely manner, and other factors as justice may require.

(c) DOE's authority to compromise, modify or remit a civil penalty may be exercised at any time prior to a final decision by the United States Court of Appeals if § 429.126 procedures are utilized, or prior to a final decision by the United States District Court, if § 429.128 procedures are utilized.

(d) Notwithstanding paragraph (a) of this section, DOE or the respondent may propose to settle the case. If a settlement is agreed to by the parties, the respondent is notified and the case is closed in accordance with the terms of the settlement.

APPENDIX A TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF COVERED CONSUMER PRODUCTS AND CERTAIN HIGH-VOLUME COMMERCIAL EQUIPMENT

(a) The first sample size (n_1) for enforcement testing must be four or more units, except as provided by § 429.57(e)(1)(i).

(b) Compute the mean of the measured energy performance (\bar{x}_1) for all tests as follows:

$$x_1 = \frac{1}{n_1} \left(\sum_{i=1}^{n_1} x_i \right) \quad [1]$$

where x_i is the measured energy or water efficiency or consumption from test i , and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows:

$$s_1 = \sqrt{\frac{\sum_{i=1}^{n_1} (x_i - x_1)^2}{n_1 - 1}} \quad [2]$$

(d) Compute the standard error (s_{x_1}) of the measured energy performance from the n_1 tests as follows:

$$s_{x_1} = \frac{s_1}{\sqrt{n_1}} \quad [3]$$

(e)(1) Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy efficiency standard (EES) as the

desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = EES - ts_{x_1}$$

$$LCL_1 = EES - ts_{x_1} \quad [4] \text{ and } UCL_1 = EES + ts_{x_1} \quad [5]$$

where t is the statistic based on a 95 percent two-tailed probability level with degrees of freedom ($n_1 - 1$).

(2) For an energy efficiency or water efficiency standard, compare the mean of the first sample (x_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is below the lower control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or greater than the upper control limit,

then the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or greater than the lower control limit but less than the upper control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step (e)(3).

(3) For an energy efficiency or water efficiency standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05EES} \right)^2 - n_1 \quad [6]$$

where s_1 and t have the values used in equations 2 and 4, respectively. The term “0.05 EES” is the difference between the applicable energy efficiency or water efficiency standard and 95 percent of the standard, where 95 percent of the standard is taken as the lower control limit. This procedure yields a sufficient combined sample size (n_1+n_2) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean efficiency is equal to the applicable standard. Given the solution value of n_2 , determine one of the following:

(i) If the value of n_2 is less than or equal to zero and if the mean energy or water efficiency of the first sample (x_1) is either equal to or greater than the lower control limit (LCL_1) or equal to or greater than 95 percent of the applicable energy efficiency or water efficiency standard (EES), whichever is greater, *i.e.*, if $n_2 \leq 0$ and $x_1 \geq \max(LCL_1, 0.95 EES)$, the basic

EES), the basic model is in compliance and testing is at an end.

(ii) If the value of n_2 is less than or equal to zero and the mean energy efficiency of the first sample (x_1) is less than the lower control limit (LCL_1) or less than 95 percent of the applicable energy or water efficiency standard (EES), whichever is greater, *i.e.*, if $n_2 \leq 0$ and $x_1 < \max(LCL_1, 0.95 EES)$, the basic model is not in compliance and testing is at an end.

(iii) If the value of n_2 is greater than zero, then, the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (6). If the value of n_2 so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(4) Compute the combined mean (\bar{x}_2) of the measured energy or water efficiency of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2} \left(\sum_{i=1}^{n_1+n_2} x_i \right) \quad [7]$$

(5) Compute the standard error (S_{x_2}) of the measured energy or water performance of

the n_1 and n_2 units in the combined first and second samples as follows:

$$S_{x_2} = \frac{s^1}{\sqrt{n_1 + n_2}} \quad [8]$$

NOTE: s_1 is the value obtained in Step (c).

(6) For an energy efficiency standard (EES), compute the lower control limit (LCL_2) for the mean of the combined first and second samples using the DOE EES as

the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step (e)(1)) as follows:

$$LCL_2 = EES - ts_{x_2} \quad [9]$$

where the t -statistic has the value obtained in Step (e)(1) and s_{x_2} is the value obtained in Step (e)(5).

(7) For an energy efficiency standard (EES), compare the combined sample mean (\bar{x}_2) to the lower control limit (LCL_2) to determine one of the following:

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(i) If the mean of the combined sample (x_2) is less than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), whichever is greater, *i.e.*, if $x_2 < \max(LCL_2, 0.95 \text{ EES})$, the basic model is not compliant and testing is at an end.

(iii) If the mean of the combined sample (x_2) is equal to or greater than the lower control limit (LCL_2) or 95 percent of the applicable energy efficiency standard (EES), which-

ever is greater, *i.e.*, if $x_2 \geq \max(LCL_2, 0.95 \text{ EES})$, the basic model is in compliance and testing is at an end.

(f)(1) Compute the upper control limit (UCL_1) and lower control limit (LCL_1) for the mean of the first sample using the applicable DOE energy consumption standard (ECS) as the desired mean and a probability level of 95 percent (two-tailed test) as follows:

$$LCL_1 = ECS - ts_{x_1} \quad \text{and} \quad UCL_1 = ECS + ts_{x_1} \quad [10]$$

where t is the statistic based on a 95 percent two-tailed probability level with degrees of freedom ($n_1 - 1$).

(2) For an energy or water consumption standard, compare the mean of the first sample (x_1) with the upper and lower control limits (UCL_1 and LCL_1) to determine one of the following:

(i) If the mean of the first sample is above the upper control limit, then the basic model is in noncompliance and testing is at an end. (Do not go on to any of the steps below.)

(ii) If the mean of the first sample is equal to or less than the lower control limit, then

the basic model is in compliance and testing is at an end. (Do not go on to any of the steps below.)

(iii) If the sample mean is equal to or less than the upper control limit but greater than the lower control limit, then no determination of compliance or noncompliance can be made and a second sample size is determined by Step (f)(3).

(3) For an Energy or Water Consumption Standard, determine the second sample size (n_2) as follows:

$$n_2 = \left(\frac{ts_1}{0.05ECS} \right)^2 - n_1 \quad [11]$$

where s_1 and t have the values used in equations (2) and (10), respectively. The term "0.05 ECS" is the difference between the applicable energy or water consumption standard and 105 percent of the standard, where 105 percent of the standard is taken as the upper control limit. This procedure yields a sufficient combined sample size ($n_1 + n_2$) to give an estimated 97.5 percent probability of obtaining a determination of compliance when the true mean consumption is equal to the applicable standard. Given the solution value of n_2 , determine one of the following:

(i) If the value of n_2 is less than or equal to zero and if the mean energy or water consumption of the first sample (x_1) is either equal to or less than the upper control limit (UCL_1) or equal to or less than 105 percent of the applicable energy or water consumption standard (ECS), whichever is less, *i.e.*, if $n_2 \leq 0$ and $x_1 \leq \min(UCL_1, 1.05 \text{ ECS})$, the basic

model is in compliance and testing is at an end.

(ii) If the value of n_2 is less than or equal to zero and the mean energy or water consumption of the first sample (x_1) is greater than the upper control limit (UCL_1) or more than 105 percent of the applicable energy or water consumption standard (ECS), whichever is less, *i.e.*, if $n_2 \leq 0$ and $x_1 > \min(UCL_1, 1.05 \text{ ECS})$, the basic model is not compliant and testing is at an end.

(iii) If the value of n_2 is greater than zero, then the value of the second sample size is determined to be the smallest integer equal to or greater than the solution value of n_2 for equation (11). If the value of n_2 so calculated is greater than $21 - n_1$, set n_2 equal to $21 - n_1$.

(4) Compute the combined mean (x_2) of the measured energy or water consumption of the n_1 and n_2 units of the combined first and second samples as follows:

$$\bar{x}_2 = \frac{1}{n_1 + n_2} \left(\sum_{i=1}^{n_1+n_2} x_i \right) \quad [12]$$

(5) Compute the standard error (S_{x_2}) of the measured energy or water consumption of the n_1 and n_2 units in the combined first and second samples as follows:

$$s_{x_2} = \frac{s^1}{\sqrt{n_1 + n_2}} \quad [13]$$

NOTE: s_1 is the value obtained in Step (c).
(6) For an energy or water consumption standard (ECS), compute the upper control limit (UCL_2) for the mean of the combined first and second samples using the DOE ECS

as the desired mean and a one-tailed probability level of 97.5 percent (equivalent to the two-tailed probability level of 95 percent used in Step (f)(1)) as follows:

$$UCL_1 = ECS + ts_{x_1} \quad [14]$$

where the t-statistic has the value obtained in (f)(1).

(7) For an energy or water consumption standard (ECS), compare the combined sample mean (\bar{x}_2) to the upper control limit (UCL_2) to determine one of the following:

(i) If the mean of the combined sample (\bar{x}_2) is greater than the upper control limit (UCL_2) or 105 percent of the ECS whichever is less, *i.e.*, if $\bar{x}_2 > \min(UCL_2, 1.05 \text{ ECS})$, the basic model is not compliant and testing is at an end.

(ii) If the mean of the combined sample (\bar{x}_2) is equal to or less than the upper control limit (UCL_2) or 105 percent of the applicable energy or water performance standard (ECS), whichever is less, *i.e.*, if $\bar{x}_2 \leq \min(UCL_2, 1.05$

ECS), the basic model is in compliance and testing is at an end.

APPENDIX B TO SUBPART C OF PART 429—SAMPLING PLAN FOR ENFORCEMENT TESTING OF COVERED EQUIPMENT AND CERTAIN LOW-VOLUME COVERED PRODUCTS

The Department will determine compliance as follows:

(a) The first sample size (n_1) must be four or more units, except as provided by § 429.57(e)(1)(ii).

(b) Compute the mean of the measured energy performance (\bar{x}_1) for all tests as follows:

$$x_1 = \frac{1}{n_1} \left(\sum_{i=1}^{n_1} x_i \right) \quad [1]$$

where x_i is the measured energy efficiency or consumption from test i , and n_1 is the total number of tests.

(c) Compute the standard deviation (s_1) of the measured energy performance from the n_1 tests as follows: